

DGE SCHEINDLIN

Page 1 of 35

File
Copy

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Tim WHITE (A74 878 427)	:	X
Plaintiff,	:	
-against-	:	
ANDREA J. QUARANTILLO, Director, New York City District, United States Citizenship and Immigration Services;	:	
EMILIO T. GONZALES, Director, United States Citizenship and Immigration Services;	:	
MICHAEL CHERTOFF, Secretary, Department of Homeland Security;	:	
ALBERTO R. GONZALES, Attorney General of the United States;	:	
ROBERT S. MUELLER, III, Director, Federal Bureau of Investigations,	:	
Defendants.	:	X

07 CIV 70

Civil Action No. _____

07 CIV 7682

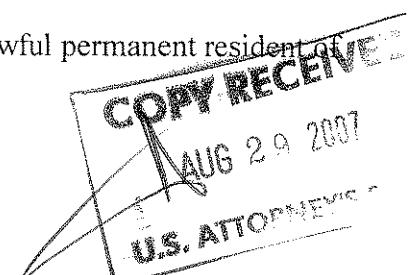
Civil Action No.

**COMPLAINT FOR WRIT OF MANDAMUS
AND, IN THE ALTERNATIVE, PETITION FOR HEARING
ON NATURALIZATION APPLICATION**

Plaintiff, by his attorneys, WILDES & WEINBERG, P.C., hereby alleges, upon information and belief, as follows:

INTRODUCTION

1. This is a civil action brought by Plaintiff, Mr. Tim White, a lawful permanent resident of the United States.



the United States, to compel Defendants to take action on his Application for Naturalization (Form N-400). The application was filed with the U.S. Citizenship and Immigration Service (“USCIS”) on May 19, 2003, and he was interviewed on April 15, 2004, by Immigration Officer Henry and successfully passed the English language and U.S. history and government tests but his application has not yet been adjudicated.

Defendants have improperly delayed processing the application to Plaintiff's detriment.

2. In the alternative, as USCIS has failed to make a determination on Plaintiff's application before the end of the 120-day period after the date on which his examination was conducted, Plaintiff requests that this Court conduct a hearing on his naturalization application pursuant to 8 U.S.C. § 1447(b). Plaintiff's examination was conducted on April 15, 2004, and more than 3 years have passed without a determination on his application.

JURISDICTION

3. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1361 (*mandamus*).
4. The action seeks to compel the Defendants and those acting under them, pursuant to 28 U.S.C. § 1361, to perform their statutory duty to Plaintiff to adjudicate his application for immigration benefits, which the Defendants have failed to adjudicate.
5. Under 28 U.S.C. § 1361, “(t)he district courts shall have original jurisdiction of any action in the nature of *mandamus* to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff.”
6. In addition, this Court has federal question jurisdiction over this action pursuant to 28

U.S.C. § 1331. Under 28 U.S.C. § 1331, “(t)he district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.”

7. This Court has jurisdiction over this action under 28 U.S.C. § 1331 because it arises under the Administrative Procedure Act (“APA”) (5 U.S.C. §§ 702 and 704), and under the Immigration and Nationality Act (“INA”) and regulations implementing it (title 8 of the C.F.R.).
8. Under 5 U.S.C. § 702, “[a] person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute is entitled to judicial review thereof.” Mr. White has been adversely affected by the Defendants’ failure to adjudicate his application.
9. Under 5 U.S.C. § 704, “final agency action for which there is no other adequate remedy in a court [is] subject to judicial review.” There is no other adequate remedy for the defendants’ failure to adjudicate plaintiff’s application other than the instant action.
10. This action arises under the INA and the regulations implementing it because Mr. White is seeking immigration benefits that are governed by the INA and its regulations.
11. Jurisdiction is not precluded by INA § 242(a)(2)(B)(ii), 8 U.S.C. § 1252(a)(2)(B)(ii), because this matter does not involve judicial review of an action of Defendants relating to an act of discretion. Rather, this action seeks review of the Defendants’ failure to take action on applications that they are required to perform by law.
12. In the alternative, this Court has jurisdiction over this action pursuant to INA § 336(b), 8 U.S.C. § 1447(b). Under this provision, “[i]f there is a failure to make a determination under section 1446 of this title before the end of the 120-day period after the date on

which the examination is conducted under such section, the applicant may apply to the United States district court for the district in which the applicant resides for a hearing on the matter. Such court has jurisdiction over the matter and may either determine the matter or remand the matter, with appropriate instructions, to the Service to determine the matter.”

VENUE

13. Venue of this action is proper under 28 U.S.C. § 1391(e)(3) because Plaintiff resides in this judicial district, and no real property is involved in this action.
14. Venue of this action is also proper under 8 U.S.C. § 1447(b), which provides that an applicant for naturalization may apply to the United States district court for the district in which he resides for a hearing on the matter. Plaintiff resides in this judicial district.

PARTIES

15. Plaintiff Tim WHITE, resides at 309 West 99th St., Apt. 2C, New York, NY 10025. He is an applicant for naturalization having filed an N-400, Application for Naturalization on May 19, 2003 with the United States Citizenship and Immigration Service. (“USCIS”).
16. Defendant Andrea Quarantillo is sued in her official capacity only. She is the New York City District Director of the United States Citizenship and Immigration Services. As such, she is the Department of Homeland Security Secretary’s designate for the New York City District, charged with the duty of administration and enforcement of all the functions, powers, and duties of the USCIS. Plaintiff was interviewed at the USCIS New York District office on April 15, 2004.
17. Defendant Emilio T. Gonzales is the Director of USCIS and is sued in his official capacity only. Defendant Gonzales is charged with the administration of USCIS, a

bureau within the Department of Homeland Security, and implementation of the Immigration and Nationality Act, 8 U.S.C. §§ 1101, et seq. 8 C.F.R. § 100.2(a).

18. Defendant Michael Chertoff is the Secretary of the Department of Homeland Security and is sued in his official capacity only. All authorities and functions of the Department of Homeland Security to administer and enforce the immigration laws are vested in the Secretary of Homeland Security. Defendant Chertoff is further authorized to delegate such powers and authority to subordinate employees of the DHS. 8 U.S.C. §1103(a); 8 C.F.R. § 2.1.
19. Defendant Alberto R. Gonzales is the Attorney General of the United States and is sued in his official capacity only. Defendant Gonzales is charge with the administration of the Department of Justice, including the Federal Bureau of Investigation.
20. Defendant Robert S. Mueller, III, is the Director of the Federal Bureau of Investigations (FBI) and is sued in his official capacity only. Defendant Mueller is charged with the administration of the FBI, the law enforcement agency that conducts security clearances for other U.S. government agencies, such as the Department of State and USCIS. As will be shown, Defendant has failed to complete the security clearances on Plaintiff's case.

FACTS

21. Plaintiff, Tim White, is a native of Russia and citizen of Russia. On April 2, 1998, Mr. White became a lawful permanent resident of the United States.(See Ex. 1)
22. Plaintiff resides at 309 West 99th St., Apt. 2C, New York, NY 10025. Plaintiff married Tate Osten (formerly Tatiana Tcherniavski) on December 10, 1982. Plaintiff resides with his wife, and his two children Savva Tcherniavski, born October 14, 1989, and Paulina Von Ahlstrom (formerly Polina Tcherniavski), born January 30, 1985.

23. Plaintiff's immediate family has been naturalized in 2005.
24. Plaintiff is a self-employed multimedia artist, with a focus on contemporary photography, video art, and video installation art, whose office is located on 205 Madison Ave., Ste 1166, New York, NY 10165.
25. Plaintiff's former name was Dmitri Tcherniavski, as it appeared in his passport that was issued by the Russian Federation. (See Ex. 2)
26. On August 29, 2000, Plaintiff petitioned to officially change his name from Dmitri Tcherniavski, to Tim J. White.
27. On October 2, 2000, he was granted an authorization to assume the name of Tim J. White by The Civil Court of the City of New York, 141 Livingston Street, Brooklyn, New York. (See Ex. 3)
28. Petitioner was subsequently issued a Social Security card and a New York State driver's license under his new name of Tim White. (See Ex. 4).
29. Plaintiff, Tim White, filed an application for naturalization (Form N-400) with the United States Citizenship and Immigration Service(USCIS) on May 19, 2003.
30. On June 12, 2003, USCIS issued Tim White a receipt notice of his N-400 application for naturalization. (See Ex. 5)
31. On April 15, 2004, Plaintiff appeared for a Naturalization interview before District Adjudications Officer ("DAO") Henry, at the USCIS New York District Office, 26 Federal Plaza, New York, New York 10278. All requested documentation was presented at the interview. Plaintiff took the Naturalization Examination on U.S. History and government.

32. DAO Henry gave Mr. White form N-652 that indicated that Mr. White had passed the tests of English and U.S. history and government, but that a decision about his application could not yet be made. (See Ex. 6)
33. DAO Henry stated that Mr. White should be able to complete his naturalization process with the Oath Ceremony within one month.
34. As of August 21, 2007, Plaintiff has not received an Oath Ceremony Notice.
35. On March 23, 2005, Mr. White was fingerprinted by the USCIS. (See Ex. 7)
36. In October 2006, Mr. White was most recently fingerprinted by the USCIS. (See Ex. 8)
37. Plaintiff made at least six in-person inquiries to the United States Citizenship and Immigration Services at 26 Federal Plaza, New York, NY 10278, using the INFOPASS system.
38. On April 9, 2007 Plaintiff made his most recent inquiry to the United State Citizenship and Immigration Service. He received a receipt that indicated that his application is pending receipt of security checks. (See Ex. 9 and 10)
39. Plaintiff telephoned the Federal Bureau of Investigation, regarding his security clearances. An agent indicated that his criminal background checks have cleared and were sent to the Immigration Service on or about November 16, 2006. The agent also specified that the security clearances delay occurred due to the incomplete “name check” clearance.
40. Pursuant to an April 25, 2006, “Fact Sheet” issued by USCIS (available at www.uscis.gov), the agency utilizes three background check mechanisms for cases involving an application for immigration benefits: the Interagency Border Inspection

System ("IBIS") Name Check, an FBI Fingerprint Check, and an FBI Name Check.

According to the Fact Sheet, results of an IBIS check are usually available immediately; the FBI generally forwards responses to fingerprint checks within 24-48 hours; and responses to an FBI name check take approximately two weeks in 80% of cases. The Fact Sheet further notes that in approximately 20% of cases, FBI name checks may take up to six months, and less than 1% of those cases remain pending for more than six months. (See Ex. 11).

41. It has now been over three years since Plaintiff was interviewed by DAO Henry.

Plaintiff, has made requests to determine the status of his application and the delays associated with the approval of the application. Plaintiff is still waiting for approval of his naturalization application and final swearing in at an oath ceremony.

CLAIMS FOR RELIEF

42. The allegations contained in paragraphs 1 through 41 above are repeated and realleged as though fully set forth herein.

43. As a Lawful Permanent Resident of the United States, Plaintiff is entitled by law to receive a final decision on his properly filed naturalization application.

44. Defendants and those acting under them are under a nondiscretionary duty to adjudicate Plaintiff's application, and Defendants have unreasonably failed to perform that duty.

45. Plaintiff has complied with all of the requirements for obtaining naturalization, and he is fully eligible to be granted United States Citizenship.

46. When the Agency fails to make a decision on the Naturalization application within 120 days after examination, a naturalization applicant may ask the United States District

Court to intervene and adjudicate that application. 8 U.S.C. § 1447(b). The majority of courts consider the examination referred to as the initial interview scheduled under 8 U.S.C. § 1447(b). *See, e.g., Alhamedi v. Gonzalez*, Slip Copy, 2007 WL 1573935 (S.D.N.Y. 2007); *U.S.A. V. Hovseian*, 359 F.3d 1144, 1151 (9th Cir. 2004).

47. Defendants and those acting under them are charged by law with the statutory obligation to adjudicate naturalization applications. Defendants owe Plaintiff a non-discretionary duty to adjudicate his application for naturalization, and have unreasonably failed to perform that duty. *See generally Przhebelskaya v. U.S. Citizenship and Immigration Services*, 338 F.Supp 2d 399, 405 (E.D.N.Y. 2004) (citing, with approval, cases holding that USCIS has a duty to adjudicate applications for adjustment of status in a reasonable period of time). Under the circumstances presented in this case, a period of over three years to conduct a routine background check constitutes an unreasonable amount of time.
48. Defendants have deprived Plaintiff of all of the benefits of becoming a Citizen of the United States, and have deprived Plaintiff of the peace of mind that he is entitled to.
49. The delay in processing the applications is not in any way attributable to Plaintiff.
50. By making numerous inquiries on his naturalization application to no avail, Plaintiff has exhausted any administrative remedies that may exist. No other remedy exists to resolve Defendants' delay and refusal to act on Plaintiff's naturalization application.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays this Honorable Court to grant the following relief:

1. Assume jurisdiction over the case and naturalize the Plaintiff under the terms of 8 USC 1447(b); or
2. Compel Defendants and those acting under them to perform their duty to adjudicate the Petition; and
3. Compel Defendant, Federal Bureau of Investigation to complete the security checks on

Plaintiff by November 22, 2007, 90 days from the filing of this mandamus action; and

4. Grant such other and further relief as this Court deems proper under the circumstances.

Dated: August 24, 2007

Respectfully submitted,



Thomas Vanasse (TV 1213)
Attorney for the Plaintiffs
Wildes & Weinberg P.C.
515 Madison Avenue
New York, NY 10022
(212) 753-3468

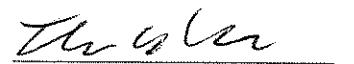
VERIFICATION

Thomas W. Vanasse, under penalty of perjury, states that the following:

1. That I am an attorney admitted to practice before this Court. I am an associate attorney in the firm Wildes & Weinberg, P.C., the attorneys for the Plaintiffs of the foregoing Complaint.

2. I affirm the truth of the contents of the foregoing Complaint upon information and belief. The sources of my information and belief are documents provided to me by, and conversations with, the Plaintiff.

Dated: New York, New York
August 25, 2007


Thomas W. Vanasse, Esq.

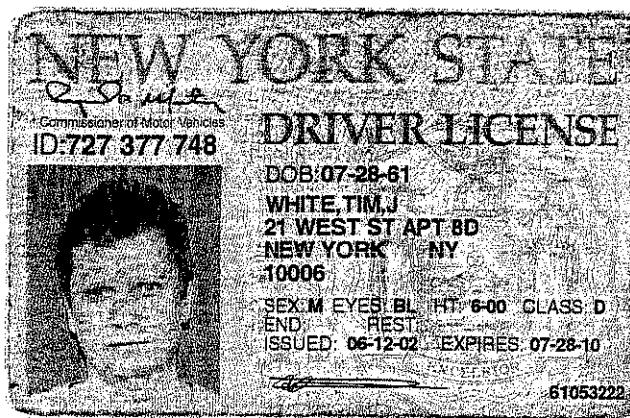
PERMANENT RESIDENT CARD

NAME WHITE, TIM J

INS A# 074-878-427

Birthdate Category Sex
07/28/61 E16 M
Country of Birth
Russia
CARD EXPIRES 04/09/11
Resident Since 04/02/98

C1USA0748784274EAC0111950349<<
6107288M1104097RUS<<<<<<<<<<<<
WHITE<<TIM<J <<<<<<<<<<<<<



Sworn Before Me

STATE OF NEW YORK

COUNTY OF NY

02/07/06

This is a true copy

NOTARY
State of New York
County of County
Date Nov. 30, 2006

EXHIBIT



Sworn before me this is a true copy
STATE OF NEW YORK

STATE OF NEW YORK
COUNTY OF N.Y.

02/17/08

NOTARY - 110, State of New York

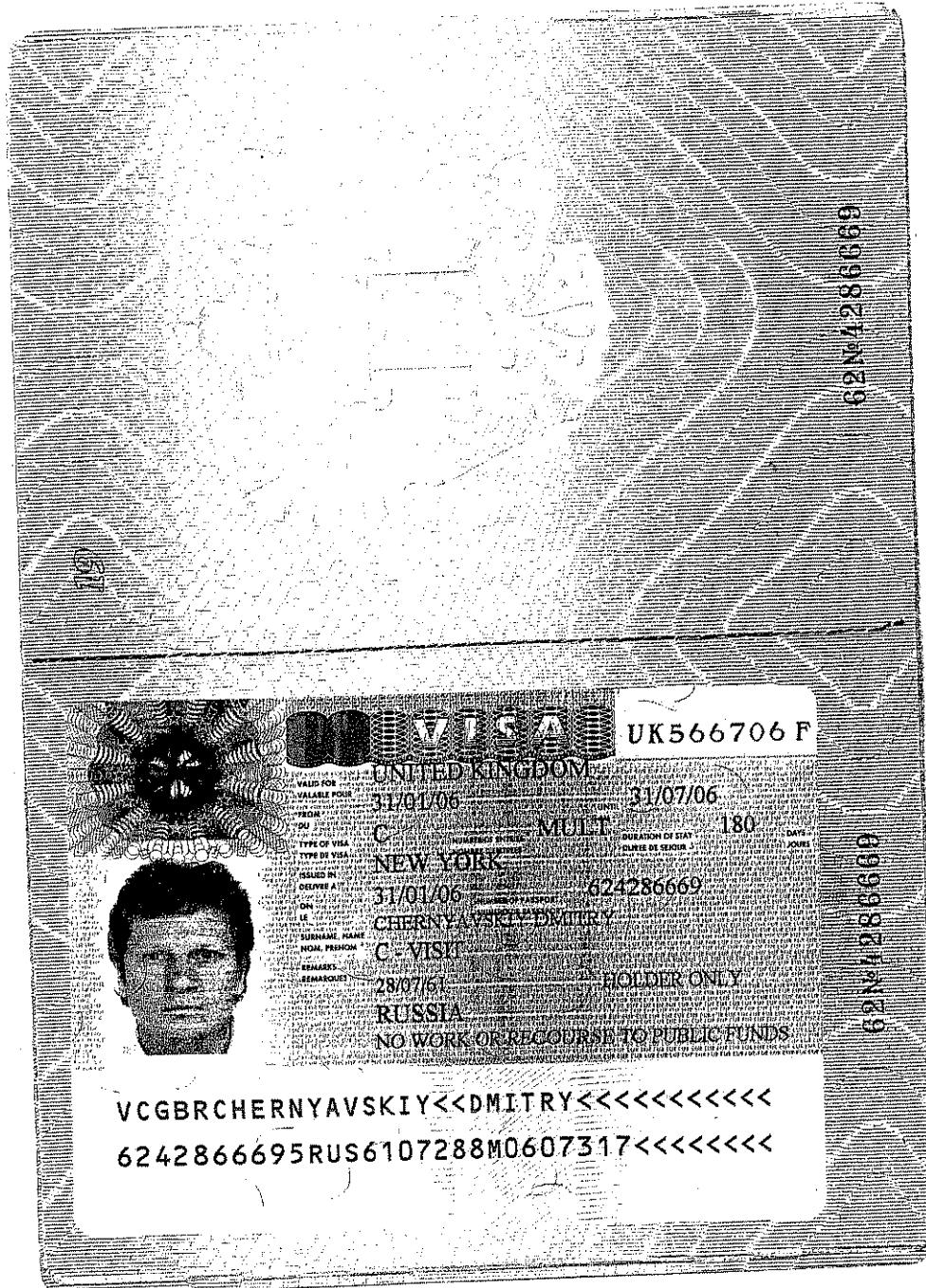
100-10471
CITY OF NEW YORK
93-66468807

Section 11. In New York County

EXHIBIT

7







At a Special Term Part II, of the Civil Court of the City of New York held in and for the County of Kings, at the Courthouse, 141 Livingston Street, Brooklyn, New York this day of **OCT 2 - 2000** 2000.

P R E S E N T: RACHEL AMY ADAMS
JUDGE, CIVIL COURT
Hon.

In the Matter of the Application of X

DMITRI TCHERNIAVSKI

For Leave to change his name to

TIM J. WHITE.

*CERTIFICATION FEE PAID
10-24-00 # 15180*

ORDER **01002 2000**

Upon reading and filing the petition of DMITRI TCHERNIAVSKI verified the 29th day August, 2000 praying for a change of name to TIM J. WHITE, it being requested that petitioner be permitted to assume the name of TIM J. WHITE in the place of stead of his present name, DMITRI TCHERNIAVSKI and the Court being satisfied that the petition is true and it appearing from the petition and the Court being satisfied that there is no reasonable objection to the change of the name proposed.

NOW, on motion of DMITRI TCHERNIAVSKI the said petitioner, it is ordered that:

1. DMITRI TCHERNIAVSKI born on July 28, 1961, in St. Petersburg, Russia with birth certificate issued by St. Petersburg Central Department of Registration of Birth Acts.

BE AND is hereby authorized to assume the name of TIM J. WHITE in the place and stead of DMITRI TCHERNIAVSKI upon complying with the provisions of Article 6 of the Civil Rights Law and of this order.

EXHIBIT

3

2. This order shall be entered and the petition upon which it was granted be filed within ten days from the date hereof in the office of the Clerk of the Civil Court of the City of New York, County of Kings.

3. At least once within twenty days after entry of this order, a notice shall be published in the New York newspaper published in the County of Kings, in substantially the following form:

Notice is hereby given that an order entered by the Civil Court, Kings County, on the OCT 2 - 2000 bearing Index No. NO 1302 2000, a copy of which may be examined at the office of the Clerk, located at 141 Livingston Street, Brooklyn, New York, in room number 304 grants petitioner the right effective on the OCT 2 - 2000 day of 19, to assume the name of TIM J. WHITE.

His birth name is DMITRI TCHERNIAVSKI.

His date of birth is July 28, 1961.

His present address is 305 Madison Avenue, Room 1146, New York, NY 10065.

His place of birth is St. Petersburg, Russia.

4. Within forty days of the making of this Order, proof of such publication by affidavit shall be filed with the Clerk of the Civil Court in the County of Kings.

5. Following filing of the Petitioner and entry of Order as hereinabove directed, the publication of such notice and the proof of publication thereof, and the service of a copy of said Order and said papers as hereinbefore directed, and on and after the OCT 2 - 2000 day of 2000, 2000 the

State of New York } ss
County of Kings }

JACK BAER, Chief Clerk of the Civil Court
of the City of New York, DO HEREBY CERTIFY THAT
the provisions of the foregoing order for change of name
have been complied with.

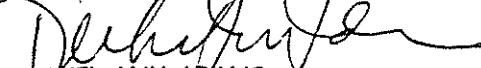
IN WITNESS WHEREOF, I have hereunto set
my hand this 24 day of Oct 2000

Jack Baer
Chief Clerk of the Civil Court
of the City of New York

Petitioner, shall be known as and be the name of TIM J. WHITE which he is hereby authorized to assume.

6. Within 30 days of the date of this order a copy shall be served by certified mail or ~~or~~ ^{or} Federal ~~Postal~~ ^{Priority} and proof filed with the Clerk of Civil Court 40 days thereafter

Enter:


RACHEL AMY ADAMS
JUDGE, CIVIL COURT

J.C.C.



Civil Court of the City of New York
141 Livingston Street
Brooklyn, NY 11201

Register #: KA Transaction No.: 15180

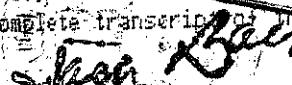
Index Number: 1062 KCV 2000
TCHERNIAVSKI vs. WHITE

FEE: \$5.00 Paid ~~October 14, 2000~~

Check-M.O.

Certification Of A Document

I, Jack Baer, Chief Clerk, do hereby certify that I have compared the attached copy with the original document on file in my office and this is a correct and complete transcript of the original.


JACK BAER, Chief Clerk

No. of Pages: 3 ~~6~~ by: dw

PCR 10-24-00 PMG 15:21
KEEP THIS RECEIPT WITH YOUR COURT PAPERS

Affidavit of Publication

THE BROOKLYN RECORD

State of New York
County of Kings ss
City of New York

Catherine Banat

of Brooklyn, City of New York, being duly sworn, says that he/she is Principal Clerk of the The Brooklyn Record, a weekly newspaper published in the County of Kings, City of New York, and that the Notice, of which the annexed is a true copy, was published in said publication, The Brooklyn Record

on October 13, 2000

129 Montague Street

Brooklyn, NY 11201

Catherine Banat

Catherine Banat
Principal Clerk

Sworn and Subscribed to Before Me This 13 th

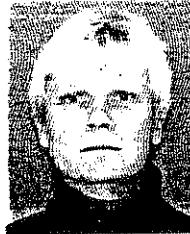
Day of October 2000 ¹³

Frederick A. Halla
Notary Public

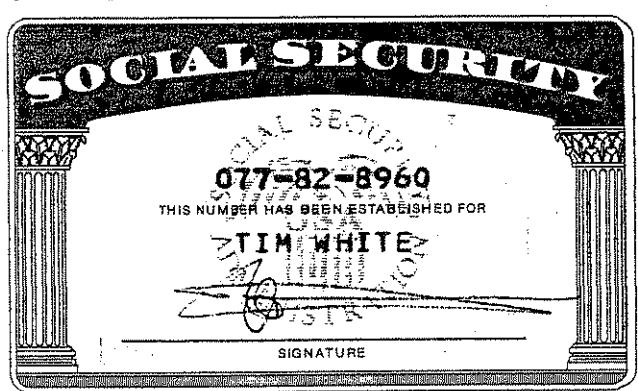
FREDERICK A. HALLA
Notary Public, State of New York
No. 24-4684390, Qual. in Kings Co.
Commission Expires May 31, 2001

NEW YORK STATE
DRIVER LICENSE

ID:727 377 748



DOB: 07-28-61
WHITE, TIM, J
305 MADISON AVE 1146
NEW YORK, NY
10165
SEX: M EYES: BL H: 6-00 CLASS: D
END: REST: 10-11-01 EXPIRES: 07-28-02
61670122



EXHIBIT

A



Receipt		NOTICE DATE June 12, 2003	
CASE TYPE N400 Application For Naturalization		INS A# A 074 878 427	
APPLICATION NUMBER ESC*001039293	RECEIVED DATE May 19, 2003	PRIORITY DATE May 19, 2003	PAGE 1 of 1
APPLICANT NAME AND MAILING ADDRESS TIMOTHY WHITE 21 WEST STREET APT 8D NEW YORK NY 10006		PAYMENT INFORMATION: Single Application Fee: \$310.00 Total Amount Received: \$310.00 Total Balance Due: \$0.00	
<p>The above application has been received by our office and is in process. Our records indicate your personal information is as follows:</p> <p>Date of Birth: July 28, 1961 Address Where You Live: 21 WEST STREET APT 8D NEW YORK NY 10006</p> <p>Please verify your personal information listed above and immediately notify our office at the address or phone number listed below if there are any changes.</p> <p>You will be notified of the date and place of your interview when you have been scheduled by the local INS office. You should expect to be notified within 540 days of this notice.</p> <p>If you have any questions or comments regarding this notice or the status of your case, please contact our office at the below address or customer service number. You will be notified separately about any other cases you may have filed.</p> <p>If you have other questions about possible immigration benefits and services, filing information, or INS forms, please call the INS National Customer Service Center (NCSC) at 1-800-375-5283. If you are hearing impaired, please call the NCSC TDD at 1-800-767-1833.</p> <p>If you have access to the Internet, you can also visit INS at www.ins.usdoj.gov. Here you can find valuable information about forms and filing instructions, and about general immigration services and benefits. At present, this site does not provide case status information.</p> <p>INS Office Address: US IMMIGRATION AND NATURALIZATION SERVICE 75 LOWER WELDEN STREET ST ALBANS VT 05479</p> <p>INS Customer Service Number: (802) 527-4913</p> <p>APPLICANT COPY</p> <p>EXHIBIT 5</p> <p>ESC\$001009541</p>			

Aff.

074-87842-7

On 4/16/04, you were interviewed by INS Officer AM

- 1 You passed the test of English and U.S. history and government.
- 1 You passed the test of U.S.history and government and the English language requirement was waived.
- 1 The Service has accepted your request for a Disability Exception. You are exempted from the requirement to demonstrate English language ability and/ or a knowledge of U.S.history and government.

You will be given another opportunity to be tested on your ability to speak / write English.

You will be given another opportunity to be tested on your knowledge of U.S. history and government.

Please follow the instructions on the Form N-14.

INS will send you a written decision about your application.

You did not pass the second and final test of your _____ English ability/ _____ knowledge of U.S. history and government. You will not be rescheduled for another interview for this N-400. INS will send you a written decision about your application.

A) _____ Congratulations! Your application has been recommended for approval. At this time, it appears that you have established your eligibility for naturalization. If final approval is granted, you will be notified when and where to report for the Oath Ceremony.

B) A decision cannot yet be made about your application.

It is very important that you notify INS if you change your address. Come to any scheduled interview. Submit all requested documents.

end any questions about this application in writing to the officer named above. Include your full name, A-number, and a copy of this paper.
Go to any oath ceremony that you are scheduled to attend.
Notify INS as soon as possible in writing if you cannot come to any scheduled interview or oath ceremony. Include a copy of this paper and a copy of the scheduling notice.



DBI TENPRINTER Applicant Information Worksheet (AIW)

When you have completed this worksheet, turn it into the receptionist. Have this worksheet, your appointment notification letter and picture identification available.

NAME: White Tim J
 Last First Middle Suffix

DATE OF BIRTH: 1961 July 28
 Year Month Day PHONE #: 917-592 5946

PLACE OF BIRTH: St. Petersburg SEX: (Male or Female) Male

RACE: Check the most appropriate code below:

American Indian or Alaskan Native Black White (Hispanic also check)

Asian or Pacific Island

HEIGHT: 6 Feet 00 Inches WEIGHT: 170 Pounds

EYE COLOR: Check the most appropriate code below:

Black Brown Green Gray Pink Hazel Blue Maroon

HAIR COLOR: Check the most appropriate code below:

Black Bald White Sandy Red Gray Blonde Brown

COUNTRY OF CITIZENSHIP: RUSSIA

SOCIAL SECURITY NUMBER: 077 - 82 - 8960

ALIEN REGISTRATION NUMBER: A 074 878 427

LIST ANY OTHER NAMES YOU HAVE USED:

Tcherniavski Dmitri
 Last First Middle Suffix

RESIDENCE ADDRESS

309 West 99 St #2c New York NY 10025
 Street number and name Apartment # City State Zip Code

REASON FOR FINGERPRINT APPLICATION: (I-485, I-589, I-600, I-821, N-400): Citizenship NY 04

<u>LOCAL AIW STAMP</u>	
FD-258 Completed at CIS/ASC <u>X NK</u>	
On: <u>3/23/05</u>	By: <u>823904</u>
QC Check Completed By:	

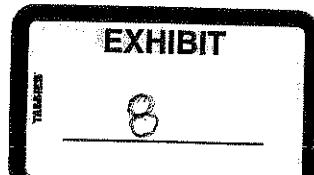


STATE OF NEW YORK)
) ss.: 077-82-8960
COUNTY OF NEW YORK)

**AFFIDAVIT IN SUPPORT OF MANDAMUS AND REQUEST FOR
ADJUDICATION OF NATURALIZATION APPLICATION NOW
PENDING FOR OVER THREE YEARS**

I, Tim White, being duly sworn, state the following under the penalties of perjury:

1. I currently reside at 309 West 99th St., Apt. 2C, NY, NY 10025.
2. I was born on July 28, 1961 in St. Petersburg, Russia. (Formerly USSR)
3. I am a citizen of Russia.
4. I am a person of good moral character and I have never been arrested or convicted of any crime in the United States or anywhere else in the world.
5. My birth name was Dmitri Tcherniavski.
6. On October 2, 2000, I officially changed my name from Dmitri Tcherniavski to Tim White in The Civil Court City of New York, 141 Livingston, St., Brooklyn, New York.
7. I became a lawful permanent resident on April 2, 1998. My Lawful Permanent Resident Card Reflects my current legal name of Tim White.
8. I applied for naturalization on May 19, 2003. The receipt number is ESC*001039293. My alien number is A74 878 427.



9. I was interviewed for naturalization on April 15, 2004 at the New York District Office of USCIS located at 26 Federal Plaza, NY, NY 10278.
10. District Adjudication Officer Henry interviewed me for my naturalization application. I passed the test of English and U.S. History and government. I was told that I should have a letter for the Oath Ceremony to become a United States Citizen within one month.
11. It has now been over three years since I was interviewed on April 14, 2004 and I am still waiting for the oath ceremony notice.
12. I have made in person inquiries to the United States Citizenship & Immigration Services at least six times in the last three years using the INFOPASS system.
13. I have always been told that my case is pending security clearances.
14. My last inquiry occurred on April 9, 2007 to the United States Citizenship and Immigration Service at 26 Federal Plaza. George Everts, an Immigration Information Officer, advised me in writing that my application is pending receipt of security checks.
15. I most recently was fingerprinted by the USCIS in October 2006.
16. I also have called the Federal Bureau of Investigation to check on my security clearances. I was told by the FBI that my criminal background checks have cleared and were sent to the Immigration Service on or about November 16, 2006.
17. The FBI person told me that my security clearance was delayed because my "name check" clearance had not yet been completed.

18. I am a multimedia artist focusing on cutting edge contemporary photography, video art, and video installation art. My work has been shown in Art Museums and galleries worldwide. My website is www.white-sobieski.com. I travel very often for my work and find it difficult to travel with my green card and Russian passport. I look forward to the day when I will be able to travel with just my United States Passport.

19. My immediate family have all already naturalized a long time ago. My wife and my two children were all naturalized in 2005.

20. I can assure that I am not a threat in any way to the United States or to any people anywhere. In fact my art studio was located two blocks from the World Trade Center and I was present on the day of the September 11 attacks. I had done some video work for Marsh & McLennan a few months before the September 11, attacks. On the day of the attacks, I tried to get into the World Trade Center to help my friends but I was not allowed in by the Police. When the buildings fell, I was outside, only a few blocks away. I thought that I was going to die when the towers collapsed. It took me three weeks to clean my art studio. I kept working there in the months afterwards, while the fires were still burning. I identified strongly with my adopted country at this horrible time. I am proud to have gone through this tragedy together with the people of New York. I am truly eager to become an official United States Citizen.

I respectfully request that my naturalization application be adjudicated as quickly as possible.



Tim White

Sworn and subscribed to before me
On this 18th day of April of 2007

Thom W. Vanasse
Notary Public

THOMAS W. VANASSE
Notary Public, State of New York
No. 02VA5082211
Qualified in Kings County
Commission Expires July 21, 2009



Name: Tim White

Appointment Type: Speak to immigration officer

Confirmation No.: NYC-07-96248

Authentication Code: 2b51

Appointment Date: August 29, 2007

Appointment Time: 8:45 AM

Location: 26 FEDERAL PLAZA, New York, NY 10278; Lobby 1-102

**This is your Confirmation
Number:**



* NYC - 07 - 96248 *

**If you wish to cancel this appointment, you will need the
following Personal Identification Number:
88769**

Please be on time. Failure to show up on time will result in the cancellation of your appointment. You will then need to reschedule your appointment. You will not be admitted more than 15 minutes before your scheduled appointment time.

- You must appear in person and bring photo identification along with this appointment letter.
- Acceptable forms of identification are any of the following: Government issued identification, passport, valid driver's license, I-94, Work Authorization Card, or Permanent Resident Card. (Green Card)
- In order that we may serve you more efficiently, we recommend that you bring all applicable immigration forms, letters, receipts and supporting documents. If translations are used, they should be certified. Please bring the original documents as well.

EXHIBIT

9



Department of Homeland Security
Citizenship and Immigration Services

A74 878 427

26 Federal Plaza
New York, NY 10278

April 9, 2007

Tim White
309 West 99th Street #2C
New York, NY 10025

Dear Applicant:

This will acknowledge receipt of your inquiry dated April 9, 2007 regarding the status of your application for naturalization.

Please be advised that your application is pending receipt of security checks. Upon receipt of all security checks, a decision will be made on your application for naturalization.

We hope the information provided is helpful. Thank you for your patience and cooperation in this matter.

Sincerely,


George Evertz

Immigration Information Officer
Citizenship and Immigration Services
Naturalization Section
New York District

EXHIBIT

10

U.S. DEPARTMENT OF

Close

Understanding the Immigration Security Process

Homeland Security fact sheet explains security checks for immigration benefit applicants

An explanation of the immigration security check system was issued by the U.S. Citizenship and Immigration Services April 25 in response to some applicant frustration about delays in the process.

All applicants for a U.S. immigration benefit are subject to criminal and national security background checks to ensure they are eligible for that benefit. The agency acknowledges a small number of delays, but assures the public they are not based on race, ethnicity, religion or national origin.

For related information, see *Visas, Passports and Immigration*.

The text of the fact sheet follows:

U.S. Department of Homeland Security
Fact Sheet
April 25, 2006

Immigration Security Checks—How and Why the Process Works

Background

All applicants for a U.S. immigration benefit are subject to criminal and national security background checks to ensure they are eligible for that benefit. U.S. Citizenship and Immigration Services (USCIS), the federal agency that oversees immigration benefits, performs checks on every applicant, regardless of ethnicity, national origin or religion.

Since 2002, USCIS has increased the number and scope of relevant background checks, processing millions of security checks without incident. However, in some cases, USCIS customers and immigrant advocates have expressed frustration over delays in processing applications, noting that individual customers have waited a year or longer for the completion of their adjudication pending the outcome of security checks. While the percentage of applicants who find their cases delayed by pending background checks is relatively small, USCIS recognizes that for those affected individuals, the additional delay and uncertainty can cause great anxiety. Although USCIS cannot guarantee the prompt resolution of every case, we can assure the public that applicants are not singled out based on race, ethnicity, religion, or national origin.

USCIS strives to balance the need for timely, fair and accurate service with the need to ensure a high level of integrity in the decision-making process. This fact sheet outlines the framework of the immigration security check process, explaining its necessity, as well as factors contributing to delays in resolving pending cases.

Why USCIS Conducts Security Checks

USCIS conducts security checks for all cases involving a petition or application for an immigration service benefit. This is done both to enhance national security and ensure the integrity of the immigration process. USCIS is responsible for ensuring that our immigration system is not used as a vehicle to harm a nation or its citizens by screening out people who seek immigration benefits improperly or fraudulently. These security checks have yielded information about applicants involved in violent crimes,

EXHIBIT

sex crimes, crimes against children, drug trafficking and individuals with known links to terrorism. These investigations require time, resources, and patience and USCIS recognizes that the process is slower for some customers than they would like. Because of that, USCIS is working closely with the FBI and other agencies to speed the background check process. However, USCIS will never grant an immigration service or benefit before the required security checks are completed regardless of how long those checks take.

How Immigration Security Checks Work

To ensure that immigration benefits are given only to eligible applicants, USCIS adopted background security check procedures that address a wide range of possible risk factors. Different kinds of applications undergo different levels of scrutiny. USCIS normally uses the following three background check mechanisms but maintains the authority to conduct other background investigations as necessary:

The Interagency Border Inspection System (IBIS) Name Check— IBIS is a multi-agency effort with a central system that combines information from multiple agencies, databases and system interfaces to compile data relating to national security risks, public safety issues and other law enforcement concerns. USCIS can quickly check information from these multiple government agencies to determine if the information in the system affects the adjudication of the case. Results of an IBIS check are usually available immediately. In some cases, information found during an IBIS check will require further investigation. The IBIS check is not deemed completed until all eligibility issues arising from the initial system response are resolved.

FBI Fingerprint Check—FBI fingerprint checks are conducted for many applications. The FBI fingerprint check provides information relating to criminal background within the United States. Generally, the FBI forwards responses to USCIS within 24-48 hours. If there is a record match, the FBI forwards an electronic copy of the criminal history (RAP sheet) to USCIS. At that point, a USCIS adjudicator reviews the information to determine what effect it may have on eligibility for the benefit. Although the vast majority of inquiries yield no record or match, about 10 percent do uncover criminal history (including immigration violations). In cases involving arrests or charges without disposition, USCIS requires the applicant to provide court certified evidence of the disposition. Customers with prior arrests should provide complete information and certified disposition records at the time of filing to avoid adjudication delays or denial resulting from misrepresentation about criminal history. Even expunged or vacated convictions must be reported for immigration purposes.

FBI Name Checks—FBI name checks are also required for many applications. The FBI name check is tally different from the FBI fingerprint check. The records maintained in the FBI name check process consist of administrative, applicant, criminal, personnel and other files compiled by law enforcement. Initial responses to this check generally take about two weeks. In about 80 percent of the cases, no match is found. Of the remaining 20 percent, most are resolved within six months. Less than one percent of cases subject to an FBI name check remain pending longer than six months. Some of these cases involve complex, highly sensitive information and cannot be resolved quickly. Even after FBI has provided an initial response to USCIS concerning a match, the name check is not complete until full information is obtained and eligibility issues arising from it are resolved.

For most applicants, the process outlined above allows USCIS to quickly determine if there are criminal or security related issues in the applicant's background that affect eligibility for immigration benefits. Most cases proceed forward without incident. However, due to both the sheer volume of security checks USCIS conducts, and the need to ensure that each applicant is thoroughly screened, some delays on individual applications are inevitable. Background checks may still be considered pending when either the FBI or relevant agency has not provided the final response to the background check or when the FBI or agency has provided a response, but the response requires further investigation or review by the agency or USCIS. Resolving pending cases is time-consuming and labor-intensive; some cases legitimately take months or even several years to resolve. Every USCIS District Office performs regular reviews of the pending caseload to determine when cases have cleared and are ready to be decided. USCIS does not

share information about the records match or the nature or status of any investigation with applicants or their representatives.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Tim White (A074 878 427)	:	X
	:	
Plaintiff,	:	
	:	
-against-	:	
	:	
ANDREA J. QUARANTILLO, Director,	:	
New York City District, United States	:	
Citizenship and Immigration Services;	:	
EMILIO T. GONZALES, Director, United	:	
States Citizenship and Immigration Services;	:	
MICHAEL CHERTOFF, Secretary,	:	
Department of Homeland Security;	:	
ALBERTO R. GONZALES, Attorney	:	
General of the United States;	:	
ROBERT S. MUELLER, III, Director,	:	
Federal Bureau of Investigations,	:	
	:	
Defendants.	:	
	X	

Civil Action No. 07-CIV-7682

COMPLAINT

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